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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Federal-State Joint Board	)	CC Docket No. 96-45
On Universal Service	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262

To: The Commission

**BELLSOUTH CORPORATION**  
**REPLY TO OPPOSITIONS AND COMMENTS**

Pursuant to Section 1.429(g) of the Commission's rules, 47 C.F.R. § 1.429(g), BellSouth Corporation ("BellSouth"), on behalf of its wholly-owned subsidiaries BellSouth Telecommunications ("BST") and BellSouth Cellular Corp. ("BSCC"), and the affiliates through which they provide service, hereby replies to oppositions and comments filed in response to BellSouth's petition for reconsideration and clarification in the above-referenced proceeding.<sup>1</sup> Given the comments filed and the Commission's past position, the Commission should affirm that CMRS carriers have full authority to recover their federal universal service contributions through rates charged for all their services -- *i.e.*, interstate *and* intrastate. Further, should the Commission determine that refunds of

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<sup>1</sup>*Federal-State Joint Board On Universal Service*, CC Docket No. 96-45, *Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket 96-45, Sixth Report and Order in CC Docket No. 96-262*, FCC 99-290 (rel. Oct. 8, 1999), 64 Fed. Reg. 60,349 (Nov. 5, 1999) ("*Remand Order*"); *see Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) ("*Texas Office of Public Utility Counsel*"); *Petition for Reconsideration and Clarification of BellSouth Corporation*, CC Docket No. 96-45 and CC Docket No. 96-262, filed Dec. 6, 1999 ("*Petition*").

contributions assessed on intrastate revenues are required, it should conduct a further rulemaking proceeding to determine how to appropriately implement a refund program.

## DISCUSSION

### I. THE COMMISSION'S RULING PERMITTING CMRS CARRIERS TO RECOVER USF CONTRIBUTIONS THROUGH CHARGES ASSOCIATED WITH ALL SERVICES IS FINAL

In its Petition, BellSouth demonstrated that the policy adopted in the *Fourth Reconsideration Order* in the Commission's Universal Service proceeding, whereby CMRS carriers are permitted "to recover their contributions through rates charged for all their services," was unchallenged before the Fifth Circuit and not otherwise called into question by that court.<sup>2</sup> No interested parties challenged this position or otherwise took issue with BellSouth's request that the Commission reaffirm this policy in light of the Fifth Circuit's decision.<sup>3</sup>

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<sup>2</sup>See Petition at 13-14 (citing *Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration*, 13 F.C.C.R. 5318, 5489 ¶ 309 (1997)).

<sup>3</sup>AT&T Corp. and MCI WorldCom have sought Supreme Court review of the Fifth Circuit's decision in *Texas Office of Public Utility Counsel*. As noted in BellSouth's Petition, however, the Commission's ruling in the *Fourth Reconsideration Order* was not at issue before the Fifth Circuit and no parties sought reconsideration of that ruling before the Commission. The petition for writ of certiorari addresses the Commission's interstate/intrastate jurisdiction for purposes of assessing federal universal service contributions -- *not* for purposes of recovering such contributions from subscribers. See AT&T Corp. and MCI WorldCom Network Services, Inc., Petition for Writ of Certiorari, No. 99-1249, filed January 26, 2000, at i (question presented is whether "the FCC has authority to consider a carrier's intrastate operations and revenues in implementing federal programs designed to ensure universally available local telephone service"). As discussed *infra*, petitioner AT&T's support of BellSouth's position demonstrates further that CMRS carriers' recovery of federal universal service contributions is not part of AT&T's challenge.

In fact, AT&T Corp., the only party addressing this issue in response to the Petition, “fully supports BellSouth’s request for clarification” in this regard.<sup>4</sup> Consistent with BellSouth’s Petition, AT&T Corp. states:

As BellSouth correctly notes, no party challenged [the ruling] in the Fifth Circuit, and the Court did not address any issue relating to the recovery of wireless carriers’ federal universal service assessments. . . . Moreover, as BellSouth shows, Section 332 expressly exempts CMRS carriers from state rate and entry regulation, and the Commission has preempted state regulation of rates for CMRS services. Accordingly, the jurisdictional limitations of Section 2(b) have no application to CMRS carriers’ cost recovery of their federal universal service assessments.<sup>5</sup>

The Commission should thus reaffirm its policy of the *Fourth Reconsideration Order* permitting CMRS carriers to recover contributions from rates for all services, interstate *and* intrastate.

## **II. THE COMMISSION SHOULD HOLD FURTHER RULEMAKING PROCEEDINGS IF IT DETERMINES THAT CARRIERS MUST BE REFUNDED CONTRIBUTIONS ASSESSED ON INTRASTATE REVENUES**

Parties are divided on whether the Fifth Circuit’s decision must be implemented retroactively and, thus, whether the Commission may retain contributions assessed on carriers’ intrastate end-user telecommunications revenues.<sup>6</sup> In its Petition, BellSouth “recognize[d] that undoing these past assessments, which have already been paid, is a bit like unscrambling eggs.”<sup>7</sup> BellSouth stated further that:

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<sup>4</sup>AT&T Corp. Comments on Petitions for Reconsideration and Clarification, CC Docket No. 96-45 and CC Docket No. 96-262, filed April 24, 2000, at 7-8.

<sup>5</sup>AT&T Corp. at 7-8 (citations omitted).

<sup>6</sup>*See id.* at 2-7 (opposing refunds); Opposition of MCI WorldCom, Inc., CC Docket No. 96-45 and CC Docket No. 96-262, filed April 24, 2000, at 1-5 (same); Comments of Teleglobe USA, Inc., CC Docket No. 96-45 and CC Docket No. 96-262, filed April 24, 2000, at 4-7 (supporting refunds).

<sup>7</sup>*See* Petition at 13; *see also* AT&T Corp. at 4 n.4.

The Commission will have to ensure that reasonable procedures are followed for refunding unlawfully assessed payments to carriers, taking into account the carriers' varied circumstances, while at the same time not disrupting the schools and libraries and rural health care programs established by Section 254. *This will be a complex task to accomplish, and may require further proceedings.*<sup>8</sup>

The commenting parties are in agreement that any refund scheme would be difficult to implement.<sup>9</sup>

MCI WorldCom, however, while asserting that refunds are not required nevertheless proposes at the outset that ILECs be denied refunds. Clearly, a Commission determination regarding impact of the universal service contribution requirements on different classes of carriers cannot legitimately be based on MCI WorldCom's conclusory assertions. Moreover, should the Commission eventually determine that refunds are required, the implementation of a refund scheme -- addressing issues such as the extent of a carrier's eligibility for refunds, and the impact of the timing of refunds on different carriers -- also merits a more thorough vetting than that provided by MCI WorldCom. MCI WorldCom's proposed restrictions on refund eligibility are simply premature and should be disregarded until after such time as the Commission determines whether refunds are required in the first place. BellSouth reiterates that, given the considerable financial impact of such refunds on carriers and consumers, as well as the Commission's Section 254 obligations, the manner in which the Commission implements and administers a refund program should be premised on a record derived from a notice and comment rulemaking.

## CONCLUSION

For the foregoing reasons and those discussed in BellSouth's Petition, the Commission: (1) should reaffirm CMRS carriers' authority to recover federal universal service contribution costs

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<sup>8</sup>Petition at 13 (emphasis added).

<sup>9</sup>See AT&T Corp. at 7; MCI WorldCom at 5.

through charges for interstate and intrastate services; and (2) not address issues regarding the implementation of any refund scheme (should it determine that refunds are required) except through a further rulemaking proceeding.

Respectfully submitted,

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May 8, 2000

**CERTIFICATE OF SERVICE**

I, Jo-Ann Monroe, hereby certify that on this 8th day of May, 2000, copies of the foregoing "Reply to Oppositions and Comments" in CC Docket Nos. 96-45 and 96-262 were served by first-class United States mail, postage prepaid to the following:

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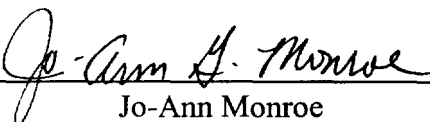
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